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OFFICE OF PETITIONS

In re	:
Ruben, et al.	: DECISION REGARDING
Application No. 10/075,446	: PATENT TERM ADJUSTMENT
Filed: February 15, 2002	:
Attorney Docket No. PF155C1D1	:

This decision is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT CALCULATION," filed October 20, 2004, requesting correction of the patent term adjustment (PTA) indicated on the patent.

The request is **DISMISSED**.

On August 24, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is three hundred ninety-three (393) days. On October 20, 2004, Applicants submitted the instant "LETTER REGARDING PATENT TERM ADJUSTMENT CALCULATION". Applicants state that they believe there was an error in the patent term adjustment calculation, in particular because a Terminal Disclaimer was filed on July 15, 2004.

The Office initially determined a patent term adjustment of three hundred ninety-three (393) days based on an adjustment for PTO delay of four hundred nineteen (393) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by zero days of applicant delay.

The provisions of § 154(b), for adjustment due to examination delay, apply to original applications, other than designs, filed on or after May 29, 2000. The Office calculates patent term adjustment for examination delay in all eligible applications. In calculating the patent term adjustment, the Office does not differentiate between applications that have terminal disclaimers and those that do not. Nor does the Office undertake the burdensome task of reviewing every application with a terminal disclaimer to determine if the patent term adjustment accorded would adjust the term beyond the expiration date specified in the disclaimer.

Rather, on issuance of the application, in compliance with 35 U.S.C. 154(b) and 37 C.F.R. § 1.703(g), it is indicated in the patent that the patent term adjustment indicated therein is subject to any disclaimer. Moreover, it is also stated therein that the patent is subject to a terminal disclaimer.

Receipt of the PTOL-85b, submitted with the instant "LETTER REGARDING PATENT TERM ADJUSTMENT CALCULATION", is acknowledged. The \$1,370 issue fee and the \$300 publication fee have been charged to Deposit Account No. 08-3425, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin A. Ferriter
for

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